

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DISTRICT

IN THE MATTER OF THE APPLICATION OF THE
AMERICAN CIVIL LIBERTIES UNION TO UNSEAL
CERTAIN COURT RECORDS

CIV. 04-4200

MOTION FOR ORDER TO OPEN CERTAIN SEALED DOCUMENTS

The American Civil Liberties Union (“ACLU”) a 501(c)(4) by and through their undersigned counsel requests an order from this Court unsealing certain documents in the case DONALD E. MOELLER vs DOUGLAS WEBER, Warden et al. Civ. 04-4200. The ACLU is one of the largest civil rights organizations in the United States that actively advocates for the civil and human rights of all people in the United States. As such the ACLU publicizes information regarding the death penalty on a frequent basis through the ACLU website, media outlets and printed material. The ACLU actively participates in litigation regarding the death penalty across the nation and has an entire department dedicated to litigation, legislation and advocacy around the death penalty. The ACLU’s involvement in death-penalty issues includes South Dakota.

The ACLU requests all information pertaining to the manufacture, creation, purchase and manufacturer’s instructions of the pentobarbital and the identity and location of the pharmacy involved in the creation of the pentobarbital that the State of South Dakota intends to use in Moeller’s execution. Likewise, any and all information regarding the identities of the members

of the execution team including any information taken in deposition of any members of Moeller's execution team.

In the alternative, the ACLU requests that if the Court does not grant the above requested unsealing, that it order more limited relief as follows: 1) order the clerk or a court employee or the parties to redact from the currently sealed documents the information required by this Court's protective orders (Doc. 188 & 286), i.e., any identifying information concerning personnel involved in the execution or suppliers of lethal-injection drugs; and 2) order unsealed the now redacted documents so that they may be made available to the public.

The information contained within the sealed documents are of grave public importance in the public and ongoing debate regarding the death penalty in general and Donald Moeller's case in particular, as they pertain to the controversial procedure under which he will be executed. The documents being specifically sought are numbered as the following in PACER: 288, 290, 298, 301, 307,308, 309, 310, 311, 314, 315, 317, 318, 319, 320, 323, 324, 325, 326, 327, 328, 330, 331, 333, 334, 335, 336, 337, 339, 341, 342, 343, 345, 346, 347, 348,349, 350, 352, 354, 355, 362, 363, 370.

WHEREFORE, for the reasons stated herein and in the accompanying memorandum of points and authorities and affidavit in support hereof, the ACLU respectfully requests an order releasing all sealed documents in the above referenced case, or in the alternative, the release of the same documents redacted in accordance with this Court's Protective Orders.

Respectfully submitted,

S/ Robert Doody

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2012 I electronically filed a copy of the foregoing Motion, Memorandum and Affidavit in the United States District Court for the District of South Dakota and that the CM/ECF will automatically file all documents with other counsel.

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